



RESOLUTION No. 2012-3009

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH YAMHILL COUNTY, THE CITY OF DUNDEE, AND THE CITY OF MCMINNVILLE FOR THE PHASE I OF THE NEWBERG-DUNDEE BYPASS PROJECT, PROVIDING FOR JOINT-COOPERATION IN FILING AN APPLICATION FOR A LOAN FROM THE OREGON DEPARTMENT OF TRANSPORTATION (“ODOT”) FOR THE FUNDING OF THE LOCAL MATCH FOR THE PROJECT, AND AUTHORIZING THE CITY MANAGER TO FILE THE JOINT-APPLICATION

RECITALS:

1. The City of Newberg has rated the Newberg-Dundee Bypass Project (“Project”) as a high priority for the City to complete in order to ensure the livability of the city.
2. The City has worked for many years with ODOT, which is the agency in charge of the bypass, and in cooperation with Yamhill County and the Cities of Dundee and McMinnville.
3. The local match required for this Project is \$20,000,000.00.
4. Yamhill County, the City of Dundee, and the City of McMinnville wish to enter an agreement with the City of Newberg in order to file a joint-application for a loan from ODOT for \$16,000,000.00 to fund the their portion of the local match required by this Project.
5. The Confederated Tribes of Grand Ronde is providing \$4,000,000.00 of the local match for this Project.
6. If the application is approved, the City will need to enter into a Loan Agreement for repayment of the funds.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The city manager is authorized to execute the Intergovernmental Agreement (IGA), which provides that the City agrees to its share of the local match for the Project to be \$2,211,200.00 (13.82%). The IGA is hereby attached as Exhibit “A” and by this reference incorporated.
2. The city manager is authorized to prepare and file the joint-application for a loan for the local match funds necessary for this Project.

3. If the application is approved, the City will need to enter into a Loan Agreement with ODOT for the repayment of the funds, and authority to enter into that Loan Agreement will be decided by the City Council in future action after due consideration.
4. The city attorney will approve all documents as to form and content.

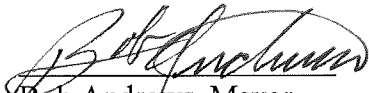
➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: July 3, 2012.

ADOPTED by the City Council of the City of Newberg, Oregon, this 2nd day of July, 2012.



Norma I. Alley, MMC, City Recorder

ATTEST by the Mayor this 5th day of July, 2012.



Bob Andrews, Mayor

**INTERGOVERNMENTAL AGREEMENT
NEWBERG DUNDEE BYPASS PROJECT**
(Yamhill County, City of Newberg, City of Dundee and City of McMinnville)

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made by and between Yamhill County, a political subdivision of the State of Oregon ("County") and the City of Newberg, an Oregon municipal corporation ("Newberg"), and the City of Dundee, an Oregon municipal corporation ("Dundee") and the City of McMinnville, an Oregon municipal corporation ("McMinnville").

RECITALS:

- A. The Oregon Department of Transportation ("ODOT") is presently in the pre-construction and final design phase of Phase I of the Newberg-Dundee Bypass Project being undertaken and funded in accordance with the requirements of Chapter 865, Oregon Laws, 2009, ("House Bill 2001") adopted by the Oregon Legislature; and
- B. As a part of the financing for construction of Phase I of the Newberg-Dundee Bypass (the "Project"), it is required that a local funding match of \$20,000,000.00 be provided to ODOT for construction of the Project; and
- C. The Confederated Tribes of Grand Ronde have agreed to participate in the local match funding by contribution of \$4,000,000.00 for such purpose; and
- D. County, Newberg, Dundee and McMinnville (collectively "the Local Governments") have agreed to participate in the local match funding by contribution of \$16,000,000.00 for such purpose; and
- E. ODOT is willing to receive one or more applications for and consider approval of loaning to the Local Governments the \$16,000,000.00 portion of the local match from the Infrastructure Bank administered by ODOT pursuant to ORS 367.035 ("the Bank") ; and
- F. The Local Governments desire to cooperate in one or more applications to ODOT ("the Application"); for a loan from the Bank to fund the remaining \$16,000,000 of local funding (the "Local Share") of the cost of the Project; and
- G. This Agreement is made to set forth the understandings and responsibilities of the Local Governments with respect to the Application(s) and the administration and repayment of any loan or loans from the Bank to the Local Governments; and
- H. The Local Governments make this intergovernmental agreement under authority of ORS 203.010 and ORS Chapter 190.

NOW, THEREFORE, IT IS HEREBY AGREED BY COUNTY, NEWBERG, DUNDEE AND MCMINNVILLE AS FOLLOWS:

AGREEMENT:

Section 1. Joint Application To ODOT for Loan(s). The Local Governments agree to cooperate in the preparation, consideration, approval and submission of a joint application or simultaneous separate applications to

ODOT for an ODOT Infrastructure Bank loan or loans in the sum of \$16,000,000.00 to fund the Local Share of the Project. The target date for submission of the joint or simultaneous separate loan application(s) shall be July 30, 2012. Each local government shall instruct and authorize staff and legal counsel to participate in such cooperative application and designate the authorized signatories for such application.

Section 2. Terms To Be Sought for any Joint or Individual Loans. Staff and legal counsel for the Local Governments shall propose and negotiate to include infrastructure loan contract terms in the infrastructure loan contract including but not limited to the following:

- a. A 20 to 25 year amortization term;
- b. A competitive interest rate or rates;
- c. Allocation of payment responsibility;
- d. Several (separate) liability for the Local Governments;
- e. Dedication of loan proceeds to construction costs for the Project;
- f. Deposit of loan (or alternative) funds in an ODOT construction account ("Construction Account"); and
- g. The timing of the use of loan proceeds; and
- h. Timing of loan amortization.

Section 3. Allocation of Loan Repayment Obligations. The Local Governments agree that the obligation for repayment of the Loan or Loans shall be allocated between the Local Governments in accordance with the allocation formula attached hereto as Exhibit A to this Agreement. Each Local Government covenants and agrees to make all loan payments allocated to such Local Government as provided for in any Infrastructure loan contract, in a timely fashion, and to hold all other Local Governments harmless therefrom.

Section 4. Sources of Repayment for ODOT Loan(s) and Loan Administration. The Local Governments agree that, subject to ODOT rules and regulations, the Loan or Loans shall be repaid as permitted by ORS 367.035 based upon loan agreement(s) to be negotiated with the Bank, with such negotiations to include the following funding sources in the following order of priority:

- a. At the election of each Local Government, revenues from Federal Transportation funds administered by the State of Oregon subject to Cooperative Fund Exchanges; and
- b. Revenues otherwise payable to the Local Governments pursuant to the authority of HB 2001.

Section 5. Approval of Loan(s) by Local Governments; Alternative Funding. Upon approval of the joint loan application or all of the simultaneous separate loan applications by ODOT, and pursuant to procedures required by ODOT, the Local Governments shall introduce, consider and vote upon a borrowing resolution or resolutions. Each Local Government's obligation to sign and enter into a infrastructure loan contract with the Bank pursuant to this Agreement shall be contingent upon the approval of such borrowing resolutions by all of the Local Governments which are parties to this Agreement or provision for alternative funding of the pro rata loan amount by all Local Governments.

Notwithstanding its approval of a borrowing resolution to authorize a loan from the Bank of its portion of the Local Share, each of the Local Governments shall have the option to transfer all or any part of its respective portion of the Local Share from an alternative funding source lawfully available to such Local Government, to the Construction Account, at the time the loan or loans from the Bank are funded and the loan funds are deposited in the Construction

Account.

Section 6. Term. The term of this Agreement is from the effective date through the date of final payment of all loans from the Bank made to fund the Local Share. Any Local Government which pays off its entire allocated share of the local funding match of its loan from the Bank or from an alternative funding source shall have fulfilled its obligation of repayment its portion of the local match, but shall remain subject to all of the other terms and provisions of this Agreement for the remainder of the term.

Section 7. County and Cities as Independent Contractors; Workers' Compensation Coverage. County and Cities are independent contractors under this Agreement. County employees are agents of the County and City employees are agents of the respective City for purposes of the Oregon Tort Claims Act. Further, each party is solely liable for any Workers' Compensation coverage for its own employees assigned to provide services under this Agreement.

Section 8. Indemnification For Tort Claims. To the extent permitted by Article XI, Section 10 of the Oregon Constitution and by the Oregon Tort Claims Act, each party shall indemnify, within the limits of the Tort Claims Act, the other party(s) against liability for damage to life or property arising from the indemnifying party's own activities under this Agreement, provided that a party will not be required to indemnify any other party for any such liability arising out of the wrongful acts of employees or agents of that other party. Notwithstanding the foregoing defense obligations, no party nor any attorney engaged by any party shall defend any claim in the name of any other party or any department or division of such other parties, nor purport to act as legal representative of the other parties or any of its departments or divisions, without the prior written consent of the legal counsel of such other party(s). Each party may, at anytime at its election assume its own defense and settlement in the event that it determines that any other party is prohibited from defending it, or that other party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so. Each party reserves all rights to pursue any claims it may have against the other party(s) if it elects to assume its own defense.

Section 9. Effective Date. This Agreement becomes effective the last date set forth adjacent to the signatures of the parties below.

Section 10. Entire Agreement; Modification of Agreement. This Agreement is the entire agreement between the parties, and no statements, promises, or inducements made by any party or agent of any party that are not contained in this written Agreement shall be valid or binding. No modifications, alterations, changes, or additions to this Agreement shall be made except in a written document signed by all parties.

DONE the last date and year set forth adjacent to the parties signatures below.

CITY OF NEWBERG, OREGON

By: _____
Daniel Danicic, City Manager
Approved by Resolution No. 2012-3009
Date: _____

ATTEST: _____
Norma I. Alley, MMC
CITY RECORDER
City of Newberg
Date: _____

APPROVED AS TO FORM & CONTENT

By: _____
Newberg City Attorney

YAMHILL COUNTY, OREGON

LESLIE LEWIS, Chair
Board of Commissioners
Date: _____

JOHN PHELAN, Director
Department of Public Works
Date: _____

APPROVED AS TO FORM & CONTENT

By: _____
Deputy County Counsel

CITY OF MCMINNVILLE, OREGON

By: _____
(authorized official)
Date: _____

ATTEST: _____

CITY RECORDER
City of McMinnville

APPROVED AS TO FORM & CONTENT

By: _____
McMinnville City Attorney

CITY OF DUNDEE, OREGON

By: _____
(authorized official)
Date: _____

ATTEST: _____

CITY RECORDER
City of Dundee

APPROVED AS TO FORM & CONTENT

By: _____
Dundee City Attorney

EXHIBIT A

Cost Allocation Formula

ALLOCATION OF LOCAL SHARE

	LOCAL SHARE	% of Total
McMinnville	\$3,209,600	20.06%
Newberg	\$2,211,200	13.82%
Dundee	\$315,200	1.97%
Yamhill County	\$10,264,000	64.15%
Total	\$16,000,000	100.00%

DEBT SERVICE ALLOCATION

	% of Debt Service
Yamhill County	64.15%
McMinnville	20.06%
Newberg	13.82%
Dundee	1.97%
	100.00%